

REMARKS

Claims 10-15, 32-37, 53-56, and 77-79 remain pending in the instant application. All claims presently stand rejected. No claims are amended herein. Claims 86-89 are added. Applicants assert that no new matter is added herein as claims 86-89 are supported at least at page 25 lines 6-20 and Figure 5D of the application as originally filed. Entry of this amendment and reconsideration of the pending claims are respectfully requested.

I. Claims Rejected Under 35 U.S.C. § 102

Claims 10, 12-13, 32, 34-35, 77 and 79 stand rejected under 35 U.S.C. § 102(e) as being anticipated by US Patent 6,177,931 to Alexander et al. (Alexander). It is axiomatic that to be anticipated, every limitation of a claim must be disclosed in a single reference.

Independent Claims 10, 32 and 77

Amended independent claim 10 now recites, in pertinent part

sending demand data feedback from the client to the server
**after a predetermined amount of pieces of content has been
utilized since the last time demand data feedback was sent to
the server** and the demand data related to the utilized pieces of
content has been generated, the demand data feedback to indicate
the relative desirability of the pieces of content available for future
broadcast.

Applicant respectfully submits that the combination of the prior art cited by the Examiner fails to disclose sending demand data feedback from the client to the server after a predetermined amount of pieces of content has been utilized since the last time demand data feedback was sent to the server.

The Examiner cites Alexander as disclosing sending demand data feedback from the client to the server after a predetermined amount of pieces of content has been utilized since Alexander describes sending the viewer profile information to the headend (see column 29 lines 14-27). Therefore, the Examiner concludes that Alexander discloses sending demand data feedback after a predetermined amount of pieces of content as that will be the content utilized during a predetermined time interval. However, this conclusion is improper as it makes a presumption that improperly limits claim 10. Specifically, the Examiner's conclusion presumes that the amount of pieces of content utilized or consumed by a client for a period of time will always be

the same. However, this presumption is not an interpretation of claim 10 in the broadest sense possible. According to claim 10, for example, without limitation thereto, as noted at page 25 line 6-20 of the specification, clients may consume content at different rates, such that some clients may consume more content than other clients in a given amount of time. Moreover, there is no restriction that one client will consume the same amount of data during different intervals of equal amounts of time, as the amount of content consumed over such equal amounts of times may be, more or less, depending on how much the user consumes.

Consequently, the Patent Office has not identified and Applicants are unable to find any teaching or suggestion of the above noted limitation of claim 10 in Alexander. Hence, Applicants respectfully request the Patent Office withdraw the rejection above for independent claim 10.

As a side note, Applicants point out a similar improper presumption regarding US Patent No. 6,298,482 to Seidman et al. (Seidman) at page 4 paragraph of the Office Action mailed March 13, 2006.

Independent claims 32 and 77 include similar non-anticipated and non-obvious elements as independent claim 10. Accordingly, Applicant requests that the instant §102(e) rejections of claims 10, 32 and 77 be withdrawn.

Dependent Claims

The dependent claims are non-obvious over the prior art of record for at least the same reasons as discussed above in connection with their respective independent claims, in addition to adding further limitations of their own. Accordingly, Applicant respectfully requests that the instant § 102 rejections of the dependent claims be withdrawn.

II. Claims Rejected Under 35 U.S.C. § 103(a)

Claims 11, 33, and 78 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Alexander in view of Seidman and in further view of US Patent 6,990,676 to Proehl et al. (Proehl). Claims 14-15, 36-37, 53, 55-56 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Alexander and in further view of US Patent 5,758,257 to Herz et al. (Herz). Claim 54 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Alexander in view of Herz and in further view of Proehl.

“To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. All words in a claim must be considered in judging the patentability of that claim against the prior art.” M.P.E.P. § 2143.03.

Independent Claim 53

Amended independent claim 53 now recites in pertinent part

A storage device...to: send demand data feedback to the server after a pertinent amount of the pieces of content has been utilized since the last timed demand data feedback was sent to the server and the demand data related to the utilized pieces of content has been generated.

Applicants respectfully submit its combination of the prior art cited by the Examiner fails to disclose the above noted limitation of claim 53.

An argument analogous to the one above for claim 10 and Alexander applies here as well. Hence, for at least those reasons, Applicants submit that Alexander does not teach or suggest the above noted limitation of claim 53.

Herz fails to cure the shortcoming of Alexander. Herz discloses a viewer profile collection system (see Figure 1). However, the Patent Office has not identified and Applicants are unable to find any teaching or suggestion in Herz of the above noted limitations of claim 53.

Hence, as neither Alexander nor Herz teaches or suggests the above noted limitations of claim 53, Applicants respectfully request the Patent Office withdraw the rejection above of claim 53.

Dependent Claims

The dependent claims are non-obvious over the prior art of record for at least the same reasons as discussed above in connection with their respective independent claims, in addition to adding further limitations of their own. Accordingly, Applicant respectfully requests that the instant § 103 rejections of the dependent claims be withdrawn.

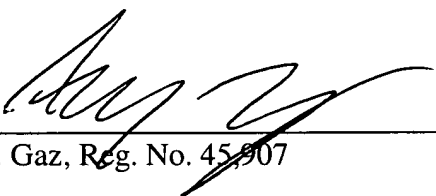
CONCLUSION

In view of the foregoing, it is believed that all claims now are now in condition for allowance and such action is earnestly solicited at the earliest possible date. If there are any additional fees due in connection with the filing of this response, please charge those fees to our Deposit Account No. 02-2666.

Respectfully submitted,

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Dated: October 26, 2006

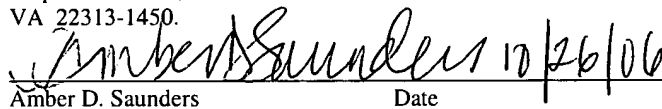


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Amber D. Saunders Date 10/26/06